

**United States Department of Labor
Employees' Compensation Appeals Board**

G.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Medford, OR, Employer**

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**Docket No. 15-1406
Issued: March 10, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 16, 2015 appellant filed a timely appeal of a June 2, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.²

ISSUE

The issue is whether appellant met his burden of proof to establish that he was totally disabled for the period beginning March 12, 2015 causally related to his accepted employment condition.

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On January 31, 2012 appellant then a 57-year-old mail handler, tripped on the corner of a general purpose mail container and fell injuring his left side and upper ribs. OWCP accepted his claim for left shoulder sprain, left anterior chest contusion, and later expanded his claim to include arthrofibrosis of the left shoulder. It authorized arthroscopic surgery of the left shoulder which was performed on July 6, 2012. Appellant stopped work on January 31, 2012 and returned to modified duty for four hours a day.

A March 14, 2012 magnetic resonance imaging scan of the left shoulder revealed moderate acromioclavicular (AC) joint osteoarthritis with inferolaterally sloping acromion, tendinopathy of the supraspinatus and infraspinatus tendons, thin intrasubstance tear in the myotendinous junction of the infraspinatus tendon, partial thickness tear of the distal supraspinatus tendon and mild degenerative changes of the glenohumeral joint. On July 6, 2012 Dr. Patrick Denard, a Board-certified orthopedist, performed a left shoulder arthroscopic biceps tenodesis, arthroscopic acromioplasty, arthroscopic distal clavicle excision, and arthroscopic minor debridement. He diagnosed left shoulder biceps tenosynovitis, subacromial impingement, AC arthritis, and rotator cuff tear.

On January 24, 2013 the employing establishment offered appellant a modified job as a mail handler, four hours per day effective January 26, 2013. Appellant accepted the position on January 24, 2013. He increased his hours to full-time limited duty on February 2, 2013 and was released to unrestricted full-time duty effective February 26, 2013. Appellant was again placed on modified duties on July 5, 2013.

On July 17, 2013 appellant filed a (Form CA-2a), recurrence of disability, asserting that on June 26, 2013 he experienced a recurrence of left shoulder pain, stiffness, and a consequential right shoulder injury causally related to his accepted work injury. He stopped work on July 12, 2013.

In a decision dated September 4, 2013, OWCP denied appellant's claim for a recurrence of disability asserting that the evidence was insufficient to establish that the June 26, 2013 recurrence and work stoppage on July 12, 2013 was causally related to the accepted work injury. Appellant requested an oral hearing which was held on December 23, 2013. He stopped work in March 2014.

In a decision dated April 30, 2014, an OWCP hearing representative set aside the September 4, 2013 decision and remanded the matter for further medical development. The hearing representative instructed OWCP to refer appellant to a second opinion physician to determine whether his claim should be expanded, whether appellant was capable of performing his full duties of a mail handler, and if he was disabled from work on or around July 5, 2013.

OWCP further developed the claim and referred him to a second opinion physician. Based on the second opinion physician's report, Dr. Ronald Teed, orthopedic surgeon, in a decision dated June 27, 2014, OWCP expanded appellant's claim to include arthrofibrosis of the left shoulder region.

In a separate decision of the same date, OWCP denied appellant's claim for recurrence of disability and claim for compensation for the period beginning July 13, 2013.

Appellant was removed from his position on December 5, 2014.

Appellant requested an oral hearing which was held before an OWCP hearing representative on January 5, 2015. He submitted a report from Dr. Michael Hebrard, a Board-certified physiatrist, dated June 23, 2014, who examined appellant for a schedule award impairment rating.³ Appellant noted a history of injury and diagnosed left shoulder adhesive capsulitis, left rotator cuff dysfunction, bicipital tenosynovitis, and left shoulder degenerative joint disease. Dr. Hebrard opined that appellant had 17 percent permanent impairment of the left shoulder causally related to the accepted work injury.

In a decision dated February 24, 2015, OWCP affirmed the June 27, 2014 decision denying appellant's claim for a recurrence of disability.

In a statement dated February 17, 2015, appellant indicated that he lost his job because he could no longer perform the physical duties of the position. He noted that the employing establishment did not offer him work within his restrictions and used all his sick leave and then was in leave without pay status beginning in March 2014. Appellant submitted a letter of warning from the employing establishment dated February 14, 2014 noting that he had unsatisfactory attendance, he failed to be regular in attendance, and was tardy and absent without permission from February 5, 2013 to February 6, 2014. He asserted that he missed work during this period due to his shoulder injury and no light-duty position being offered. Appellant stopped working completely on March 7, 2014. Also submitted was a notice of removal dated November 3, 2014, which noted that he was being removed due to continuous absence without official leave and failure to follow instructions. In an agency notice of removal or separation dated December 31, 2014, and effective December 5, 2014, the employing establishment finalized appellant's removal.

On April 1, 2015 appellant filed a (Form CA-7), claim for compensation, for total disability for the period beginning March 12, 2015. Appellant's supervisor noted on the CA-7 form that appellant was performing light-duty work and then stopped reporting for duty. He noted that appellant's previous claim for disability was denied by OWCP. The supervisor noted that appellant was removed from employment on December 5, 2014 and filed for disability retirement.

Appellant submitted a March 20, 2015 report from Dr. Hebrard regarding appellant's permanent impairment. Dr. Hebrard advised that appellant had significantly restricted range of motion of the shoulder and that his impairment rating should reflect such.

³ On April 18, 2014 appellant claimed a schedule award. On May 23, 2014 OWCP denied his claim for a schedule award. Appellant requested an oral hearing. In a November 24, 2014 decision, an OWCP hearing representative set aside the May 23, 2014 decision and remanded the matter for an OWCP medical adviser to review. In a December 23, 2014 report, an OWCP medical adviser opined that appellant had 12 percent impairment of the left arm. On February 18, 2015 OWCP granted him a schedule award for 12 percent permanent impairment of the left arm. The award ran from June 23, 2014 to March 12, 2015.

In a letter dated April 14, 2015, OWCP requested that appellant submit additional information to support his claim for compensation beginning March 12, 2015. It asked that he submit medical evidence establishing that his total disability was due to the accepted condition for the period claimed.

In a decision dated June 2, 2015, OWCP denied appellant's claim for compensation for total disability for eight hours per day beginning March 12, 2015. It advised that the evidence of record failed to support work-related disability during the period claimed.

LEGAL PRECEDENT

A claimant has the burden to prove by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.⁴ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.⁵ The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.⁶ To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.⁷

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden to establish that he or she was disabled for work as a result of the accepted employment injury.⁸

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening cause or a new exposure to the work environment that caused the illness. It can also mean an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁹

⁴ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁵ *Id.*

⁶ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ C.S., Docket No. 08-2218 (issued August 7, 2009).

⁸ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁹ *J.F.*, 58 ECAB 124 (2006). A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties, or other downsizing. 20 C.F.R. § 10.5(x). See also *Richard A. Neidert*, 57 ECAB 474 (2006).

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish, by the weight of the reliable, probative, and substantial evidence, a recurrence of total disability and an inability to perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.¹⁰ To establish a change in the nature and extent of the injury-related condition, there must be a probative medical opinion, based on a complete and accurate factual and medical history as well as supported by sound medical reasoning, that the disabling condition is causally related to employment factors.¹¹ In the absence of rationale, the medical evidence is of diminished probative value.¹² While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹³

ANALYSIS

OWCP accepted appellant's claim for left shoulder sprain and left anterior chest contusion, and arthrofibrosis of the left shoulder. Appellant returned to modified duty for four hours a day on January 24, 2013 and increased to eight hours a day on February 2, 2013. He was released to unrestricted full duty as of February 26, 2013, returned to modified duties on July 5, 2013, and stopped work in March 2014 and claimed wage-loss compensation for the eight hours of work that he missed each day. After OWCP denied appellant's claim for a recurrence of disability for the period beginning July 13, 2013, he claimed wage-loss compensation beginning March 12, 2015. The employing establishment indicated that it provided him light-duty work until he stopped coming to work. The Board finds that the medical evidence is insufficient to establish that the claimed total disability beginning March 12, 2015 was caused or aggravated by the accepted conditions.

Appellant submitted a March 20, 2015 report from Dr. Hebrard regarding a permanent impairment rating for schedule award purposes. Dr. Hebrard's report of March 20, 2015 is of limited probative value as it does not address the period of disability at issue. Appellant submitted no other medical evidence which found that he was totally disabled from work due to his accepted left shoulder condition or that specifically explained how the accepted left shoulder conditions caused or contributed to the total disability beginning March 12, 2015. Part of his burden of proof includes submitting rationalized medical evidence which supports a causal

¹⁰ *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹¹ *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

¹² *Id.*; *Robert H. St. Onge*, 43 ECAB 1169 (1992).

¹³ *Ricky S. Storms*, 52 ECAB 349 (2001).

relationship between the period of disability and the accepted injury.¹⁴ Therefore, the evidence of record is insufficient to meet appellant's burden of proof.

On appeal appellant asserts that he submitted sufficient medical evidence supporting disability for the period claimed. He indicated that he lost his job due to the work-related left shoulder injury and requested his lost wages. The Board notes that appellant did not submit rationalized medical evidence which supports a causal relationship between the period of claimed disability and the accepted injury.¹⁵ Dr. Hebrard addressed permanent impairment of appellant's left upper extremity, but did not specifically address how any disability beginning March 12, 2015 was caused or aggravated by the accepted left shoulder sprain, left anterior chest contusion and arthrofibrosis of the left shoulder left knee strain.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to establish that his total disability for the period beginning March 12, 2015 is causally related to the accepted employment injury.

¹⁴ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board